

shall be non-cancellable after 15 days. Upon cancellation, Licensee shall return all hardware and software. Licensor shall refund all payments made by Licensee except installation and warranty fees.

### **Training**

Section 5.05. Licensor shall provide three [3] days of technical orientation and training for all of Licensee's computer operations personnel at no charge. Training and orientation shall be provided at Licensee's place of business.

### **Additional Technical Support**

Section 5.06. Licensor shall provide additional technical support services to licensee on request and as available at the rate of \$65.00 per hour. Including but not limited to services rendered to not be software technical support or to be viewed in Licensor's discretion as only pertinent to Licensee. This does not include any support for Licensor's software and use thereof. This additional technical support is related to equipment that Licensee has provided that is needing servicing.

### **Maintenance and Upgrades**

Section 5.07. Licensor will provide at least 24-hour notice either (electronic, phone, fax or mail) of scheduled maintenance to the software or the system running the software, that the software or system will be shut down during the hours of 7:00am to 9:00pm or standard business hours. Licensor does not have to provide 24 hour notice if the upgrade or maintenance is a security upgrade that is mandatory by a third party or will harm or cause the system to stop functioning if not acted upon immediately or if the system stops running for an unknown reason or due to technical difficulties. Licensor may turn off software or system running the software at its own disclosure without notice between the hours of 9:00pm and 7:00am as long as there is no event scheduled during that time that would inhibit the Licensee's ability to sell tickets for that events at that time.

## **ARTICLE 6. WARRANTY AND WARRANTY SERVICE**

### **Warranty of Title**

Section 6.01. Licensor warrants that it has good title to the Software and the right to license its use to Licensee free of any proprietary rights of any other party or any other encumbrance whatever.

### **Warranty of Title Remedies**

Section 6.02. (A) Licensee shall notify Licensor of the assertion of any claim that the

Software or Licensee's use thereof under this Agreement violates the trade secret, trademark, copyright, patent, or other proprietary right of any other party, and shall cooperate with Licensor in the investigation and resolution of any such claim. Licensor shall defend Licensee against any and all such claims. Licensor shall indemnify and hold Licensee harmless from any liability for damage, costs, or other loss incurred by Licensee in connection with any such claim; however, Licensor shall not be responsible for nor liable to Licensee for lost profits, lost savings, or other incidental or consequential damages arising out of or related to any such claim.

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#### **Warranty of Conformity to Specifications**

Section 6.03. Licensor warrants that the Software shall conform to Licensor's published functional specifications when delivered to Licensee. **ANY MODIFICATION OF THE SOFTWARE BY ANY PERSONS OTHER THAN LICENSOR SHALL VOID THIS WARRANTY.**

#### **Remedy for Nonconforming Software**

Section 6.04. During a period of five [5] days after acceptance of the Software or twenty [20] days after later discovery by Licensee, Licensor shall, at its own expense, provide programming services to correct Software defects that cause the Software to fail to conform to Licensor's published functional specifications and that significantly affect its performance in accordance with those specifications, provided that Customer has notified Licensor thereof and, upon inspection, Licensor has found the Software to be nonconforming. However, **LICENSOR DOES NOT GUARANTEE SERVICE RESULTS OR REPRESENT OR WARRANT THAT ALL ERRORS WILL BE CORRECTED. LICENSEE AGREES THAT LICENSEE'S SOLE AND EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO THAT CORRECTIVE ACTION.**



### **Warranty Disclaimer**

Section 6.05. **THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

### **Limitation of Remedies**

Section 6.06. **LICENSEE AGREES THAT ITS EXCLUSIVE REMEDIES, AND LICENSOR'S ENTIRE LIABILITY WITH RESPECT TO THE SOFTWARE, SHALL BE AS SET FORTH HEREIN. LICENSEE FURTHER AGREES THAT LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF ITS USE OR INABILITY TO USE THE SOFTWARE OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.**

## **ARTICLE 7. TERMINATION**

### **Cause for Termination**

Section 7.01. The license granted herein shall be terminated automatically and without further notice upon the occurrence of any of the following:

- (1) Expiration of the term specified herein, or of any optional renewal term in the absence of a subsequent renewal in accordance with the terms of this Agreement.
- (2) Disclosure of the Software to a third party, whether directly by Licensee or indirectly and whether inadvertently or otherwise.
- (3) Refusal by Licensee to pay any periodic license fee or any increase therein provided for in this Agreement.
- (4) Cessation of business by Licensee or any successor assign to whom the Software has been legitimately transferred.
- (5) Commission by Licensee of an event of default as defined herein.

### **Events of Default**

Section 7.02. Licensee shall have committed an event of default, and this Agreement and the license granted hereunder shall terminate, if any of the following occur:

(1) Licensee attempts to use, license, or convey the Software in any manner contrary to the terms of this Agreement or in derogation of Licensor's proprietary rights in the Software.

(2) Licensee fails or neglects to perform or observe any of its existing or future obligations under this Agreement, including, without limitation, the timely payment of any sums due Licensor within 20 days after notice that the payment is delinquent.

(3) Licensee makes an assignment of Licensee's business for the benefit of creditors.

(4) A petition in bankruptcy is filed by or against Licensee.

(5) A receiver, trustee in bankruptcy, or similar officer is appointed to take charge of all or part of Licensee's property.

(6) Licensee is adjudicated a bankrupt.

### **Effect of Termination**

Section 7.03. Licensee agrees that immediately upon the operation of Section 7.01, whether or not it receives notice of termination, it shall immediately relinquish access to the Software to Licensor. Licensee further agrees that in the event of termination through its default, all fees or charges due for the remaining term of this Agreement [Liquidated Damages] shall immediately become due and payable. Liquidated damages shall be any unpaid ticket sales and projected sales for the remaining period of the Agreement. Upon termination of the license granted hereunder, Licensor's obligations under this Agreement shall cease.

## **ARTICLE 8. GENERAL TERMS AND CONDITIONS**

### **Notices**

Section 8.01. Unless otherwise provided in this Agreement, any notice required or permitted by this Agreement to be given to either party shall be deemed to have been duly given if in writing and delivered personally or mailed by first-class, registered, or certified mail, postage prepaid and addressed (when intended for Licensee) 297 W. 12<sup>th</sup> St. Suite 3A, New York, New York 10014, or (when intended for Licensor) to 2700-65 E. Valley Parkway, Escondido, CA 92027.

### **Assignment of Contract**

Section 8.02. Licensee shall not assign or otherwise transfer its rights under this Agreement or its rights hereunder without the prior written consent of Licensors. Any attempt to make such an assignment without Licensors' consent shall be void.

### **Amendments**

Section 8.03. Licensors and Licensee agree that this Agreement shall be modified only by a written agreement duly executed by persons authorized to execute agreements on their behalf.

### **Nonwaiver**

Section 8.04. Licensors and Licensee agree that no failure to exercise, and no delay in exercising any right, power, or privilege hereunder on the part of either party shall operate as a waiver of any right, power, or privilege. Licensors and Licensee further agree that no single or partial exercise of any right, power, or privilege hereunder shall preclude its further exercise.

### **Attorneys' Fees**

Section 8.05. If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. This provision shall be construed as applicable to the entire Agreement.

### **Severability**

Section 8.06. If any part of this Agreement is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect or nullify the remainder of this Agreement, and the effect shall be confined to the part immediately involved in the controversy adjudged.

### **Governing Law**

Section 8.07. This Agreement shall be deemed to have been made in, and shall be construed pursuant to, the laws of the State of California.

### **Entire Agreement**

Section 8.08. Licensee acknowledges and agrees that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and that it supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this



Agreement.

Executed, this 18 day of Oct, 2006, at E-TSI, Esco., California.

**LICENSOR**

E-TICKETS SOFTWARE, INC.

Name (print):

Name (signature):

Title:

**LICENSEE**

NEW YEAR'S NATION, LLC.

Name (print):

Jann Yogman

Name (signature):

Jann Yogman

Title

President

**EXHIBIT "A"**

- (1) Licensee shall use "E-Tickets" Logo and display "E-Tickets" on its website and applicable ticketing pages. Printed E-Tickets shall use the "E-Tickets" logo, and shall display "E-Tickets." No name other than "E-Tickets" may be used.
- (2) The printed ticket shall be confirmed admission to each venue, and without it admission shall not be granted. Duplications of any kind, including bar codes, shall not be permitted.
- (3) Licensor may display its own material and advertising on the ticket pages.